

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

VICTORIA MEWS GROUP INVESTORS LLC	§	
Plaintiff Below,	§	
Appellee	§	
	§	
VS	§	C.A. No. JP13-23-003316
	§	
	§	
YOLANDA JACKSON	§	
Defendant Below,	§	
Appellant		

TRIAL DE NOVO

Submitted: June 12, 2023

Decided: June 29, 2023

APPEARANCES:

Victoria Mews Grp Invstrs LLC, Plaintiff, appeared represented by Form 50 agent Olympia Clevenger
Yolanda Jackson, Defendant, appeared represented by attorney Kathleen S Workman, Esquire

Sean McCormick, Deputy Chief Magistrate

Peter Burcat, Justice of the Peace

Susan Ufberg, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP13-23-003316

VICTORIA MEWS GROUP INVESTORS VS YOLANDA JACKSON

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Background

On March 15, 2023, Plaintiff/Appellee VICTORIA MEWS GROUP INVESTORS LLC, by and through its *Form 50* agent, Jessie Dobies, filed Civil Action No. JP13-23-003316 in Justice of the Peace Court 13. Plaintiff/Appellee sought a monetary recovery and possession of a rental property. On April 28, 2023, the Court set a trial date, via *Zoom*, for June 2, 2023. On June 2, 2023, Ms. Dobies and Ms. Jackson appeared via *Zoom* for trial. The trial judge heard testimony from the Parties and considered the evidence presented at trial. On June 7, 2023, an Order for Judgment in favor of Plaintiff was entered by the Court. On June 12, 2023, Defendant filed a Request for a *Trial de Novo*. The Request was approved, and the case was scheduled for a *Trial de Novo* on June 26, 2023. On June 21, 2023, Kathleen S. Workman, Esquire, entered her appearance on behalf of Defendant/Appellant. On June 21, 2023, Ms. Workman filed a Motion to Dismiss Plaintiff/Appellee's Complaint based upon non-compliance with 25 *Del.C.* §5502 *Landlord remedies for failure to pay rent*, and 25 *Del.C.* §5707 *Contents of complaint generally*. The Court set the Motion Hearing to take place before the *Trial de Novo*, with the *Trial de Novo* to proceed immediately after the Motion Hearing if the Motion was denied.

On June 26, 2023, a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Susan Ufberg, and Justice of the Peace Peter Burcat convened for the Motion Hearing and possible *Trial de Novo*. Plaintiff/Appellee VICTORIA MEWS GROUP INVESTORS LLC appeared via *Zoom* through its *Form 50* agent, Olympia Clevenger. Defendant/Appellant YOLANDA JACKSON appeared via *Zoom* with her counsel Ms. Workman. Ms. Workman argued her position regarding the deficiencies with Plaintiff/Appellee's requisite Five (5) Day Notice sent to Ms. Jackson. Specifically, Ms. Workman stated the Five (5) Day Notice included an impermissible charge for damages alleged to have been done to the rental property. Ms. Workman argued damages cannot be considered as rent. Second, Ms. Workman stated the Complaint, as filed by Plaintiff/Appellee, lacked the requisite five (5) elements as set forth in the *Landlord-Tenant Code*. The Panel took Judicial Notice that Plaintiff/Appellee had not filed an opposition to Defendant/Appellant's Motion. Upon inquiry, Ms. Clevenger stated she did not dispute the statements made by Ms. Workman and acknowledged the deficiencies as set forth in Defendant/Appellant's moving papers.

Facts

Included with Plaintiff's Complaint was a copy of a "**5 DAY LETTER/DEMAND FOR PAYMENT/FINAL NOTICE**" sent to Defendant/Tenant Jackson by "Victoria Mews Apartments." Included in the letter/demand/notice was "Listed is a detailed itemization of your past due account balance." Included in the balance statement was "Damages \$637.11." Plaintiff/Appellee did not dispute the contents of the Five (5) Day Notice sent to Defendant/Appellant.

The Panel has taken Judicial Notice of the Complaint filed on March 15, 2023 by Plaintiff/Appellee. Ms. Dobies included the following statement for the *Concise Statement of Facts (Who, What, When, Where, How)*: "Resident has breached the contract by not paying rent, a demand letter was sent to resident(s)." Plaintiff/Appellee did not dispute the statement set forth on the Complaint.

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Findings

It was undisputed Defendant/Appellant was a tenant at a rental property located at 25-B O'Daniel Avenue, Newark, Delaware 19711.

The first issue to be addressed is Plaintiff's Five (5) Day Notice.

The *Landlord-Tenant Code* regulates and sets forth the legal rights, remedies and obligations of all of the parties to a residential rental agreement within the State of Delaware. See 25 *Del.C.* §5101, et seq. A landlord's remedies for a tenant's failure to pay rent are set forth in 25 *Del.C.* §5502(a), which states in pertinent part:

A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

In addition, a landlord may bring an action against a tenant for Summary Possession of a demised premises if the tenant "has wrongfully failed to pay the agreed rent." 25 *Del.C.* §5702(2).

As stated in 25 *Del.C.* §5502(a), the landlord is required to send a formal demand for payment to a tenant prior to commencing an action for Summary Possession. The demand notice is referred to as "the Five-Day Letter" or "Five-Day Notice" because a landlord must provide the tenant at least a minimum of five (5) days to cure the non-payment of rent. The purpose of the letter is to advise the tenant that if the tenant fails to pay the rent that is due and owing the landlord, the lease agreement may be terminated, and the landlord could file an action in the JP Court seeking a monetary recovery and summary possession of the rental property. Plaintiff's Five-Day Notice herein included a claim for the outstanding rent, late fees, and a damages charge. Rent and late fees are permissible amounts that can be included in a Five-Day Notice. However, a landlord cannot include a damage charge in the Five-Day Notice. Including such a charge is an overstatement of the amount due and owing for purposes of a Five-Day Notice. As the amount of \$ 637.11, as stated in the Notice, is an inflated amount, the Five-Day Notice is not in compliance with 25 *Del. C.* §5502 and therefore, the Complaint must be dismissed. This does not mean the landlord cannot pursue an action for the full amount claimed as due and owing. The limitation, and the reason for the dismissal, is the inclusion of the damage charge in the Five-Day Notice.

The second issue to be addressed, as it has been raised in Defendant/Appellant's Motion, are the contents of Plaintiff/Appellee's original Complaint filed herein. As previously stated, a landlord may bring an action against a tenant for Summary Possession of the demised premises if the tenant "has wrongfully failed to pay the agreed rent." 25 *Del.C.* §5702 (2). When an action is brought pursuant to 25 *Del C.* 5702, the Complaint must have the following five (5) contents:

The complaint shall:

- (1) State the interest of the plaintiff in the rental unit from which removal is sought;*
- (2) State the defendant's interest in the rental unit and defendant's relationship to the petitioner with regard thereto;*
- (3) Describe the rental unit from which removal is sought;*
- (4) State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and*
- (5) State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.*

25 *Del.C.* §5707. This Panel is very cognizant of the wording of 25 *Del.C.* §5707, and in particular the first three (3) words: "The complaint **shall** . . ." (emphasis added). This is not something a Judge can overlook or waive. The Panel must look to the Complaint filed by Plaintiff/Appellee to determine if the Complaint stated "the interest of the plaintiff in the rental unit from which removal" was sought. Plaintiff/Appellee stated in its *Concise Statement*

of Facts: “Resident has breached the contract by not paying rent, a demand letter was sent to resident(s).” There are no further facts presented by Plaintiff/Appellee in the Complaint. The Complaint does not set forth Plaintiff/Appellee’s interest in the rental property, and in fact does not describe/identify the rental unit from which removal was sought. It does not identify who is an owner, manager, or landlord, and was very generic in its form. The Complaint does not identify the Defendant/Appellant’s interest in the rental property, nor the relationship between the named Plaintiff and named Defendant. The “who” is identified as the “Resident.” It is unknown who the “resident” and/or “resident(s)” are in this matter. There is no mention in the Complaint of the rental unit from which removal is sought. The *Concise Statement of Facts* uses the wording “breached the contract.” There is nothing in Plaintiff/Appellee’s Complaint discussing a contract and/or the parties to any such contract. Plaintiff/Appellee has listed \$ 1,096.00 and court costs for the relief sought. There is nothing in Plaintiff/Appellee’s *Concise Statement of Facts* that supports any amount alleged as due and owing. A plaintiff can attach a copy of a written notice to the Complaint as a basis of a claim being made by a plaintiff. Plaintiff/Appellee attached a March 6, 2023 letter/demand/notice to Defendant/Appellant. That letter/demand/notice set forth an amount of \$ 1,753.66 as the “**Total Due and Payable.**” Simple math shows \$1,753.66 is not \$ 1,096.00 as set forth in the Relief Sought by Plaintiff/Appellant. As a matter of law, when a complaint is insufficient, the case cannot proceed. *Urban v. Justice of Peace Court No. 13*, 1992 WL 423846 (Del. Super. 1992).

Ms. Dobies may have known the identity and relationship of the parties listed on the Complaint, and the property at issue. However, the intended purpose of the Complaint is to provide a clear understanding to a defendant of the “Who, What, When, Where and How.” This intended purpose was not met in this case. The Complaint is not compliant with 25 *Del. C.* §5507, and therefore the Complaint must be dismissed.

Order

Based upon all of the foregoing reasons, and no opposition to Defendant/Appellant’s Motion, the Panel Grants Defendant/Appellant’s Motion to Dismiss.

This matter is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED 29th day of June, 2023

/s/ Sean McCormick (SEAL)
SEAN MCCORMICK
DEPUTY CHIEF MAGISTRATE
ON BEHALF OF THREE JUDGE PANEL

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).